HON'BLE SHRI G.S.SINGHVI, THE CHIEF JUSTICE
AND
HON'BLE SHRI JUSTICE C.V.NAGARJUNA REDDY

WRIT APPEAL No. 1315 of 2006

Between:

M. Sudershan

… Appellant

AND

The Industrial Tribunal-II,
Rep., by its Chairman, Hyderabad,
and another.

… Respondents

: JUDGMENT :

Counsel for the Appellant : Shri B.G. Ravindra Reddy

Counsel for respondent No.2 : Shri V.S.K. Rama Rao for
Shri V.T.M. Prasad

Dated: 09th July, 2007

Per G.S. SINGHVI, C.J.

Feeling aggrieved by the dismissal of his writ petition, in which he had questioned the legality of award dated 8-4-2005 passed by Industrial Tribunal-II, Hyderabad (for short, 'the Tribunal') in I.D.No.123 of 2005, the appellant has preferred this appeal under Clause 15 of the Letters Patent.

The facts, which can be culled out from the record of the appeal, are as under:

1) The appellant joined service of the Andhra Pradesh State Road Transport Corporation (Ibrahimpatnam Depot) as Driver on 23-1-1985.

2) In the course of service, he suffered two penalties of 'censure' and seven penalties of 'stoppage of increments'.

3) In March, 1999, a departmental enquiry was instituted against him on the charge of unauthorised absence from duty from 24-1-1999 to 5-3-1999.

4) The enquiry officer submitted report with the finding that the charge is proved against the delinquent i.e. the appellant.

5) The Disciplinary Authority accepted the enquiry report and issued show cause notice dated 9-3-2000 proposing the appellant's dismissal from service. A copy of the enquiry report was also supplied to him. After considering his reply, the Disciplinary Authority passed order dated 18-8-2000, whereby punishment of removal from service was imposed on the appellant.

6) After two years and six months, the appellant filed an application before Labour Court-I, Hyderabad under Section 2-A(2) of the Industrial Disputes Act, 1947 (for short, 'the Act') as amended by Andhra Pradesh Act No.32 of 1987 for quashing the punishment of removal from service. The same was registered as I.D.No.203 of 2002. Later on, the case was

transferred to the Tribunal and was registered as I.D.No.123 of 2005.

The learned Presiding Officer of the Tribunal, after considering the record of enquiry and the pleadings of I.D.No.123 of 2005 and hearing the counsel for the parties, held that the enquiry conducted against the appellant was fair and that the finding of guilty recorded against him was based on correct appreciation of the evidence. The learned Presiding Officer then considered the issue of proportionality and held that the punishment of removal from service on the charge of absence from duty for 1½ months was not justified. He, however, took cognizance of the fact that the appellant had moved the court without exhausting the statutory remedies and also the fact that the application under Section 2-A(2) of the Act was filed after two and half years, and ordained that the punishment of removal from service be reduced to that of stoppage of increments for a period of four years. Accordingly, he ordered reinstatement of the appellant with continuity of service, but with stoppage of four future increments with cumulative effect.

The appellant challenged the award of the Tribunal in Writ Petition No.28128 of 2005, but could not persuade the learned Single Judge to interfere with the discretion exercised by the learned Presiding Officer in the context of Section 11-A of the Act. The learned Single Judge referred to the judgments of the Supreme Court in **U.P. State Brassware Corporation Ltd. v. Uday Narain Pandey**[1] and **Karnataka Bank Ltd. v. A.L. Mohan Rao**[2] and held that in exercise of the power vested in it under Article 226 of the Constitution, the High Court cannot interfere in the matter of punishment imposed on the delinquent employee.

Sri B. G. Ravindra Reddy made strenuous efforts to persuade us to set aside the award of the Tribunal by arguing that the reasons assigned by the learned Presiding Officer for not quashing the punishment of removal from service in its entirety are legally

unsustainable. Sri Reddy submitted that the appellant's failure to avail the departmental remedy of appeal or the delay of two and half years in filing application under Section 2-A (2) of the Act did not warrant substitution of the penalty of removal from service with that of stoppage of four annual grade increments with cumulative effect. He submitted that while exercising power vested in it under Section 11-A, the Tribunal is required to objectively apply its mind to the gravity of charge and the past record of the delinquent and then decide whether the punishment of dismissal or removal from service is justified, but without directing his attention to this core issue, the learned Presiding Officer arbitrarily substituted the punishment of removal from service with that of stoppage of four annual grade increments ignoring the fact that absence from duty for 1½ months was an extremely trifle matter.

We have given serious thought to the arguments of the learned counsel, but have not felt persuaded to agree with him. In our opinion, the learned Single Judge did not commit any error by refusing to interfere with the discretion exercised by the Presiding Officer of the Tribunal under Section 11-A of the Act.

The power of judicial review vested in the High Court under Article 226 of the Constitution of India can be exercised in such matters only if it is shown that the adjudication made by the quasi-judicial authority suffers from any jurisdictional infirmity or is vitiated due to violation of the rules of natural justice or the findings recorded by the concerned authority are vitiated by an error of law apparent on the face of the record. This Court can scrutinise the matter to satisfy itself that the decision-making process is not tainted by arbitrariness, mala fides or violation of the rules of natural justice, but cannot sit in appeal over the actual decision except when it is shown to be perverse.

A writ of certiorari can be issued for correcting errors of jurisdiction committed by inferior courts or tribunals or quasi-judicial authorities. A writ can also be issued where, in exercise of jurisdiction

conferred on it, the Court or the Tribunal or quasi-judicial authority acts illegally or improperly, i.e., it decides a question without giving an opportunity of hearing to the party affected by the order or where the procedure adopted by it is opposed to the principles of natural justice. However, it must be remembered that the jurisdiction of the High Court to issue a writ of certiorari is supervisory in nature and not appellate one. This necessarily means that the finding of fact reached by the inferior Court, Tribunal etc., as a result of the appreciation of evidence, cannot be reopened or questioned in writ proceedings except when the judgment, order or award suffers from an error of law apparent on the face of the record. An error of law is one which can be discovered on a bare reading of the judgment, order or award under challenge along with the documents which have been relied upon by the inferior Court, Tribunal or quasi-judicial authority. An error, the discovery of which is possible only after a detailed scrutiny of the evidence produced by the parties and lengthy debate at the bar cannot be regarded as an error of law for the purpose of a writ of certiorari. A finding of fact recorded by an inferior Court or Tribunal or quasi-judicial authority can be corrected only if it is shown that in recording the said finding, the Court etc., had erroneously admitted inadmissible evidence and the same has influenced the impugned finding. Similarly, a finding of fact based on no evidence would be regarded as error of law which can be corrected by issuing a writ of certiorari. However, sufficiency or adequacy of the evidence relied upon by the inferior Court of Tribunal or quasi-judicial authority cannot be gone into by the High Court while considering the prayer for issue of a writ of certiorari. Likewise, mere possibility of forming a different opinion on re-appreciation of evidence produced by the parties is not sufficient for issue of a writ of certiorari.

In **Syed Yakoob v. K.S. Radhakrishnan**[3], the Supreme Court considered the scope of the High Courts' power to issue a writ of certiorari and laid down the following propositions:

"i) A writ of certiorari can be issued for correcting errors of jurisdiction committed by inferior courts or tribunals: these are cases where orders are passed by inferior courts or tribunals without jurisdiction, or is in excess of it, or as a result of failure to exercise jurisdiction. A writ can similarly be issued where in exercise of jurisdiction conferred on it, the Court or Tribunal acts illegally or properly, as for instance, it decides a question without giving an opportunity, be heard to the party affected by the order, or where the procedure adopted in dealing with the dispute is opposed to principles of natural justice.

ii) The jurisdiction of High Court to issue a writ of certiorari is a supervisory jurisdiction and the Court exercising it is not entitled to act as an appellate Court. This limitation necessarily means that findings of fact reached by the inferior Court or Tribunal as result of the appreciation of evidence cannot be reopened or questioned in writ proceedings. An error of law which is apparent on the face of the record can be corrected by a writ, but not an error of fact, however grave it may appear to be. In regard to a finding of fact recorded by the Tribunal, a writ of certiorari can be issued if it is shown that in recording the said finding, the Tribunal had erroneously refused to admit admissible and material evidence, or had erroneously admitted inadmissible evidence which has influenced the impugned finding. Similarly, if a finding of fact is based on no evidence, that would be regarded as an error of law which can be corrected by a writ of certiorari.

iii) A finding of fact recorded by the Tribunal cannot be challenged in proceedings for a writ of certiorari on the ground that the relevant and material evidence adduced before the Tribunal was insufficient or inadequate to sustain the impugned finding. The adequacy or sufficiency of evidence led on a point and the inference of fact to be drawn from the said finding are within the exclusive jurisdiction of the Tribunal, and the said points cannot be agitated before a writ court."

The proposition laid down in **Sayed Yakoob** (supra) has been reiterated in a recent judgment in **Mohd. Shahnawaz Akhtar & Anr. v. Ist ADJ Varanasi & ors.**[4].

In **Shaikh Mahammad Umarsaheb v. Kadalaskar Hasham Karimsab and others**[5], their Lordships of the Supreme Court, while dealing with the scope of High Court's power under Article 226

to re-appreciate the evidence produced before the trial Judge, held as under:

> "Where the evidence adduced before the trial Judge was not so immaculate that another Judge might not have taken a different view, it cannot be said that there was no evidence on which the trial Judge could have come to the conclusion he did. When the trial Court accepts the evidence, the High Court which is not hearing an appeal cannot be expected to take a different view in exercising jurisdiction under Articles 226 and 227."

In **R.S. Saini v. State of Punjab and others**[6], the Supreme Court upheld the order passed by the High Court dismissing the writ petition filed against the order of the petitioner's removal from the office of the President of Municipal Committee. Some of the observations made in that decision, which are worth noticing read as under:

> "The court while exercising writ jurisdiction will not reverse a finding of the inquiring authority on the ground that the evidence adduced before it is insufficient. If there is some evidence to reasonably support the conclusion of the inquiring authority, it is not the function of the court to review the evidence and to arrive at its own independent finding. The inquiring authority is the sole judge of the fact so long as there is some legal evidence to substantiate the finding and the adequacy or reliability of the evidence is not a matter which can be permitted to be canvassed before the court in writ proceedings."

In **Surya Dev Rai v. Ram Chander Rai**[7], the Supreme Court noted the history of the development of High Court's jurisdiction to issue writs, orders or directions under Articles 226 and 227 of the Constitution of India and laid down the following propositions:

> "i) The power to issue a writ of certiorari and the supervisory jurisdiction are to be exercised sparingly and only in appropriate cases where the judicial conscience of the High Court dictates it to act lest a gross failure of justice or grave injustice should occasion. Care, caution and circumspection need to be exercised, when any of the above said two jurisdictions is sought to be invoked during the pendency of any suit or proceedings in a subordinate court and the error though calling for correction is yet capable of being corrected at the conclusion of the proceedings in an appeal or revision preferred thereagainst and entertaining a petition invoking certiorari

or supervisory jurisdiction of the High Court would obstruct the smooth flow and/or early disposal of the suit or proceedings. The High Court may feel inclined to intervene where the error is such, as, if not corrected at that very moment, may become incapable of correction at a later stage and refusal to intervene would result in travesty of justice or where such refusal itself would result in prolonging of the lis.

ii) The High Court in exercise of certiorari or supervisory jurisdiction will not convert itself into a court of appeal and indulge in reappreciation or evaluation of evidence or correct errors in drawing inferences or correct errors of mere formal or technical character.

iii) In practice, the parameters for exercising jurisdiction to issue a writ of certiorari and those calling for exercise of supervisory jurisdiction are almost similar and the width of jurisdiction exercised by the High Courts in India unlike English courts has almost obliterated the distinction between the two jurisdictions. While exercising jurisdiction to issue a writ of certiorari, the High Court may annul or set aside the act, order or proceedings of the subordinate courts but cannot substitute its own decision in place thereof. In exercise of supervisory jurisdiction the High Court may not only give suitable directions so as to guide the subordinate court as to the manner in which it would act or proceed thereafter or afresh, the High Court may in appropriate cases itself make an order in supersession or substitution of the order of the subordinate court as the court should have made in the facts and circumstances of the case.

iv) The parameters for exercise of jurisdiction under Articles 226 or 227 of the Constitution cannot be tied down in a strait-jacket formula or rigid rules. Not less than often, the High Court would be faced with a dilemma. If it intervenes in pending proceedings there is bound to be delay in termination of proceedings. If it does not intervene, the error of the moment may earn immunity from correction. The facts and circumstances of a given case may make it more appropriate for the High Court to exercise self-restraint and not to intervene because the error of jurisdiction though committed is yet capable of being taken care of and corrected at a later stage and the wrong done, if any, would be set right and rights and equities adjusted in appeal or revision preferred at the conclusion of the proceedings. But there may be cases where “a stitch in time would save nine”. At the end, we may sum up by saying that the power is there but the exercise is discretionary which will be governed solely by the dictates of judicial conscience enriched by judicial experience and practical wisdom of the judge.”

The ambit and scope of Section 11-A of the Act was considered

by the Supreme Court in **Workmen of M/s. Firestone Tyre & Rubber Co., of India v. The Management**[8]. A two Judges Bench of the Supreme Court considered the background in which Section 11-A was inserted in the Act and held:

> "Therefore, it will be seen that both in respect of cases where a domestic enquiry has been held as also in cases where the Tribunal considers the matter on the evidence adduced before it for the first time, the satisfaction under Section 11A, about the guilt or otherwise of the workman concerned, is that of the Tribunal. It has to consider the evidence and come to a conclusion one way or other. Even in cases where an enquiry has been held by an employer and a finding of misconduct arrived at, the Tribunal can now differ from that finding in a proper case and hold that no misconduct is proved.
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> We are not inclined to accept the contentions advanced on behalf of the employers that the stage for interference under Section 11A by the Tribunal is reached only when it has to consider the punishment after having accepted the finding of guilt recorded by an employer. It has to be remembered that a Tribunal may hold that the punishment is not justified because the misconduct alleged and found proved is such that it does not warrant dismissal or discharge. The Tribunal may also hold that the order of discharge or dismissal is not justified because the alleged misconduct itself is not established by the evidence. To come to a conclusion either way, the Tribunal will have to reappraise the evidence for itself. Ultimately it may hold that the misconduct itself is not proved or that the misconduct proved does not warrant the punishment of dismissal or discharge. The Tribunal may also hold that the order of discharge or dismissal is not justified because the alleged misconduct itself is not established by the evidence. To come to a conclusion either way, the Tribunal will have to reappraise the evidence for itself. Ultimately it may hold that the misconduct itself is not proved or that the misconduct proved does not warrant the punishment of dismissal or discharge. That is why, according to us, Section 11A now gives full power to the Tribunal to go into the evidence and satisfy itself on both these points. Now the jurisdiction of the Tribunal to reappraise the evidence and come to its conclusion enures to it when it has to adjudicate upon the dispute referred to it in which an employer relies on the findings recorded by him in a domestic enquiry. Such a power to appreciate the evidence and come to its own conclusion about the guilt or otherwise was always recognised in a Tribunal when it was deciding a dispute on the basis of evidence adduced before it for the first time. Both categories are now put on a par by Section 11A.

Another change that has been effected by Section 11A is the power conferred on a Tribunal to alter the punishment imposed by an employer. If the Tribunal comes to the conclusion that the misconduct is established, either by the domestic enquiry accepted by it or by the evidence adduced before it for the first time, the Tribunal originally had no power to interfere with the punishment imposed by the management. Once the misconduct is proved, the Tribunal had to sustain the order of punishment unless it was harsh indicating victimisation. Under S.11A, though the Tribunal may hold that the misconduct is proved, nevertheless it may be of the opinion that the order of discharge or dismissal for the said misconduct is not justified. In other words, the Tribunal may hold that the proved misconduct does not merit punishment by way of discharge or dismissal. It can, under such circumstances, award to the workman only lesser punishment instead. The power to interfere with the punishment and alter the same has been now conferred on the Tribunal by S.11A.

The Legislature in S.11A has made a departure in certain respects in the law as laid down by this Court. For the first time, power has been given to a Tribunal to satisfy itself whether misconduct is proved. This is particularly so, as already pointed out by us, regarding even findings arrived at by an employer in an enquiry properly held. The Tribunal has also been given power, also for the first time, to interfere with the punishment imposed by an employer. When such wide powers have been now conferred on Tribunals, the legislature obviously felt that some restrictions have to be imposed regarding what matters could be taken into account. Such restrictions are found in the Proviso. The Proviso only emphasises that the Tribunal has to satisfy itself one way or other regarding misconduct, the punishment and the relief to be granted to workmen only on the basis of the 'materials on record' before it. What those materials comprise of have been mentioned earlier. The Tribunal, for the purposes referred to above, cannot call for further or fresh evidence, as an appellate authority may normally do under a particular statute, when considering the correctness or otherwise of an order passed by a subordinate body. The 'matter' in the Proviso refers to the order of discharge or dismissal that is being considered by the Tribunal."

In recent past, the Supreme Court has, time and again, considered the scope of Section 11-A of the Act and the doctrine of proportionality and held that power under Section 11-A (or under similar provisions) cannot be used to interfere with the quantum of punishment, on irrational or extraneous factors, or on compassionate

grounds. Reference in this connection may usefully be made to the judgments of the Supreme Court in **Bharat Forge Co. Ltd. v. Uttam Manohar Nakate**[9], **M.P. Electricity Board v. Jagdish Chandra Sharma**[10], **Regional Manager, Rajasthan State Road Transport Corporation v. Ghanshyam Sharma**[11], **J.K. Synthetics Ltd. v. K.P. Agarwal**[12] and **Coimbatore District Central Coop. Bank v. Employees Assn.**[13].

If the appellant's case is examined in the light of the proposition of law laid down in the aforementioned judgments, we do not have any hesitation to hold that the discretion exercised by the learned Presiding Officer to modify the punishment of removal from service to that of stoppage of four increments with cumulative effect does not suffer from any legal infirmity and the learned Single Judge rightly declined to interfere with the award of the Tribunal.

It is an admitted fact that in the course of service, the appellant was censured on two occasions and his increments were stopped for seven times. For the reasons best known to him, the appellant has omitted to place on record the orders of punishment. However, that does not detract from the fact that his past record was full of punishments. Therefore, even though the learned Presiding Officer may not have assigned cogent reasons for refusing to set aside the order of removal from service in its entirety, we do not find any valid ground or justification to invoke the doctrine of proportionality and exonerate the appellant ignoring the fact that in the past he had suffered nine other punishments and that he had filed application under Section 2-A(2) of the Act after long time gap of two and half years without any tangible explanation.

In the result, the appeal is dismissed.

As a sequel to dismissal of the appeal, WAMP.No.2785 of 2006 filed by the appellant for interim relief is also dismissed.

G.S. SINGHVI, C.J.

9th July, 2007

C.V. NAGARJUNA REDDY, J.

ARS

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[1] (2006) 1 SCC 479

[2] (2006) 1 SCC 63

[3] AIR 1964 SC 477

[4] JT 2002 (8) SC 69 = (2002) 9 SCC 375

[5] AIR 1970 SC 61

[6] JT 1999 (6) SC 507 = (1999) 8 SCC 90

[7] AIR 2003 SC 3044

[8] AIR 1973 SC 1227

[9] (2005) 2 SCC 489

[10] (2005) 3 SCC 401

[11] (2002) 10 SCC 330

[12] (2007) 2 SCC 433

[13] (2007) 4 SCC 669